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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/692,641	10/19/2000	Christopher M. Pohrer	16764-5722	8264

21888 7590 07/01/2003

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EXAMINER

ARYANPOUR, MITRA

ART UNIT PAPER NUMBER

3711

DATE MAILED: 07/01/2003

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 11

Application Number: 09/692,641
Filing Date: October 19, 2000
Appellant(s): POHRER, CHRISTOPHER M.

Alan H. Norman
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 15, 2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is substantially correct. It is submitted that the central issue boils down to an analysis of the facts and what flows from them. Just because the references fail to discuss a feature, which is inherently available in the use of the prior art, does not mean that the feature is not there.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-10, 19 and 20 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,308,085	KOOLE	05-1994
4,153,247	BURNS	05-1979
4,122,451	SENOH	10-1978

(10) Grounds of Rejection

Claims 1-6, 8-10, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koole (5,308,085) in view of Burns (4,153,247).

Regarding claims 1-6, the facts are that Koole shows a game system that includes two uprights formed of two telescoping sections (2 and 3), the uprights are secured to a support surface (1, see figure 1) such as the ground in a manner so that the net standards extend up from the support surface in a generally upright position, each of the standards has an upper and lower post section, and the upper section slidably engages the lower post for telescoping movement; a net (see column 3, lines 14-16) and a cable assembly (9), operatively connecting the net and cable (9) to the upper post sections (3) of the first and second net standards in a manner so that the net is between the first and second net standards and extends downward from the net-supporting cable; a tension adjusting mechanism (6) being attached to the upper post section (3) of the first net standard and being adapted to tension the net-supporting cable (9) in a taut configuration between the first and second net standards (see figures 3 and 4; column 3, lines 14-30); the tensioning mechanism (6) comprising a winch mechanism (see column 3, lines 18-22;

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wherein a cranked handle can be inserted in mechanism (6), which in turn rotates a worm that is in engagement with the part of threaded spindle (7) which finds itself interior to mechanism 6; the worm gear in combination with the cranked handle is considered to be a winch, since the definition for a winch is *[A stationary motor-driven or hand-powered hoisting machine having a drum around which is wound a rope or chain attached to the load being lifted. Or: The crank used to give motion to a grindstone or similar device]*; a drive mechanism (combination of handle 4 not shown and untying knob 5) being adapted to move the corresponding upper post section/sleeve (3) between its raised and lowered positions (see column 3, lines 8-13).

The facts are that in Koole, column 3, lines 14-30, all of the net attachment means as well as the tensioning mechanism (6) are mounted on the same movable upper post section/sleeve (3). As a result Koole indicates at column 3, lines 39-47, that the tensioning mechanism (and therefore the tensioned net) “all go up and down along with the up and down adjustment of the upper post section/outer pipe (3).

Koole does not disclose the specifics of the net. Nets having upper and lower sleeves are old and conventional. This feature is demonstrated by Burns (see figures 1 and 6). Burns shows the upper cable 16 and the lower cable 18 extend through the cable-receiving sleeve of the net (10). These cables are used to tension the net, as is old and conventional. It would have been obvious in view of Burns to have used a net with upper and lower sleeves for the device of Koole in order to allow “the upper and lower cable extensions to be raised or lowered along the entire vertical distance of the passageway while the extension cables are still attached to the net”, Burns column 1, lines 55-59. The upper post sections of the first and second net standards of Koole may be moved between their raised and lowered positions without reducing the tension. The

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adjustment of the net-support tension is an inherent and obvious feature or step necessary in the use of the Burns net post arrangement. Since Koole places no requirement upon the order in which this occurs, i.e. tensioning before or after height adjustment, it is improper to conclude that tensioning must only occur after height adjustment.

Koole as disclosed and modified above meets the structural limitations of the claimed invention. In order to use Koole's assembly one would inherently have to secure the post to the ground, provide a net and cable assembly, tension the net using the cable assembly with respect to the post, raise or lower the assembly in order to derive at the desired height. Therefore, since Koole can inherently be height adjusted both before and after tensioning each step of the method claims is addressed by the use of the Koole device.

The claimed dimensions in claims 8, 9, 19 and 20, such as the first and second net standards being spaced apart by at least 32 feet and lowering the upper post sections of the first and second standards to change the height of the mid-point of the net's upper edge margin from about 7'-11 5/8" to about 7' 4 1/8" are (as it has been pointed out in the disclosure of the present application) the standard dimensions used when playing a regulation game of volleyball, there is nothing new or unobvious about the above limitations and it would be obvious to employ them in Koole to permit regulation play.

Regarding claim 10, see comments for claims 1, 2, 6.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Koole (5,308,085) in view of Burns (4,153,247), and further in view of Senoh (4,122,451).

Regarding claim 7, Koole as disclosed and modified above shows the drive mechanism (combination of handle 4 and untying knob 5) which comprises a rod 47 with a helical compression spring around it (see column 4, lines 56-68), but does not disclose the drive mechanism to be a screw-type drive mechanism wherein the screw-type drive mechanism comprises a manual mechanism such as a crank and a gear train. Screw-type drive mechanisms are old and conventional. This feature is shown by Senoh (see figure 2). It would have been obvious in view of Senoh to have used a screw-type drive mechanism for the drive mechanism of Koole, since it has been held that broadly providing a mechanical or automatic means to replace manual activity, which has accomplished the same result, involves only routine skill in the art. *In re Venner*, 120 USPQ 192.

(11) Response to Argument

The prior art of record does not teach away, but at the same time does not expressly indicate that the net remains in full tension when raised or lowered (at all times). Appellant asserts that since the claims are directed towards a method, the prior art references must teach or suggest the claimed method step. Appellant argues that such a tension step would not be obvious, even though the facts are that the prior art of record clearly shows the claimed structure and clearly suggests that the assembly is in a permanently tensioned state (see column 2, lines 9-11) and that the vertical supports can be provided with the means for attaching and/or tensioning a net in all variations (meaning when the height is vertically adjusted), as required in practice. To the contrary it is submitted that, since the posts are telescopic, it does not matter at what point the nets are tensioned, since the adjustment in height has no bearing on the tensioning in the net, for as long as the distance between the two posts is not changed it will remain in tension.

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Furthermore, it is merely an assumption on appellant's part, that the height is adjusted prior to tensioning, since there is no such proof nor any statement at all other than his own that the net assembly has never been raised when the net is in a tensioned state. The tensioning of the net is subjective since as appellant has pointed out in the disclosure of the present application that, the tension in the net is dependent on the game being played. Mechanically, the raising and lowering of the vertical support can occur when the net is in tension. At some point additional adjustment of the tension may be made after it is fully in place. Koole teaches that the vertical supports can be raised or lowered to suit the intended use. Koole further teaches that the tension in the net assembly can be adjusted and has provided the mechanism to do so. Again Koole teaches that the height can be adjusted and means is provided for tensioning a game net in all variations, meaning the net can be tensioned at any point in time. Therefore, the facts are that the net could inherently be tensioned first and then raised or lowered. Koole is indifferent as to whether the tensioning or the height adjustment occur first and indeed makes no constraint on the order. It is believed that the friction inducing strings (15) and (17) are provided to allow vertical adjustment while under tension. However, it is also believed that given this evidence it would have been obvious to one in the art to adjust the height either before or after tension is applied, which is all that the claims require.

Regarding appellant's comments about claims 8, 9, 19 and 20, as has been pointed out in the disclosure of the present application, the claimed dimensions are standard dimensions used when playing a regulation game of volleyball. There is nothing new or unobvious about the above limitations, especially if one is playing a regulation game of volleyball. Therefore, there is

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nothing unobvious about adjusting the height and/or distance of the posts to meet the requirements of the specific type of game being played. Koole teaches this concept (see column 6, lines 11-23). Appellant's comments made on pages 15, lines 1-7 are not understood. Claim 9 requires that the first and second standards (or posts) be adjusted to meet the height requirements specified in the claim. Moving the upper post with respect to the lower post in order to achieve a desired height should not and will not have any bearing on the tension in the net, since the distance of the two standards (post) with respect to each ^{other} is not being changed and the tensioning mechanism is not being effected, since it moves up and down with the upper posts. Therefore, it is unclear as to what part of claim 9 has not been addressed? (m)

Regarding appellant's comments with respect to the Burn's patent, as appellant has pointed out the Burn's reference has been used to demonstrate that nets having upper and lower sleeves are well known in the net art. How it is attached to the net post is not at issue here.

Appellant's comments that "it is doubtful that the game net post structure described in the Koole patent is even capable of being moved between raised and lowered positions . . . (see page 12, lines 13-21)" are not understood. The fact is that Koole provides a game net post that has upper and lower telescopic posts, the posts being telescopic, for adjustability, column 3, lines 40-42. If the tension is so great that one could not pull on the handle, one could argue that the same would also be true for the present invention.

Appellant's asserts that "the Koole patent indicates that the game net post is moved between retracted and extended positions only when the net is not attached to the post and that the Koole patent discloses attachment of the net to the post only when the game net post is fixed in its condition ready for use position". It is unclear where these above excerpts were taken from.

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No support for this could be found from reading Koole's patent. If appellant contends this is the case, then it would be helpful to point out from which section of the patent such was taken.

Appellant's argues that neither Koole nor Burns suggest or show a crank-operable drive mechanism that would move the upper post section between a raised and lowered position by rotating the crank of the corresponding net standard. Neither Koole nor Burns were relied upon for showing that feature. Appellant's attention is directed to column 3, lines 8-13 of the Koole reference. For the record, the Burns reference was used to demonstrate that nets having crank operated upper and adjustable lower sleeves are well known.

The facts are that establish the prior art provided a mechanism which is clearly capable of the claimed method of use. This mechanism does not require that tensioning occur after the height adjustment. Thus, it is fair to conclude that Koole is indifferent as to the order, although the reference infers tension adjustment after height adjustment. Accordingly, one of skill in this art familiar with the reference would have found it obvious to make the tension adjustment both before and/or after the height adjustment. The remaining facts appear not to be in dispute

For the above reasons, it is believed that the rejections should be sustained.

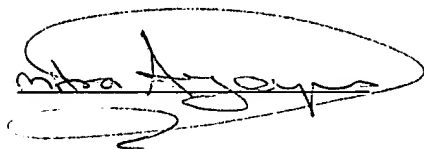
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Respectfully submitted,

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June 25, 2003

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